



Consumer Products Rule

Michigan Department of Environmental Quality • Environmental Science & Services Division • 800-662-9278



This fact sheet was designed to provide guidance for compliance with the Consumer Products Rule. The Michigan Consumer Products Rule became effective on January 29, 2007 and was amended on October 15, 2007. This amendment adopted the Ozone Transport Commission's (OTC) September 13, 2006, [Consumer Products Rule](#) (Rule).

Overview of the Rule

The Michigan Consumer Products Rule (CPR) prohibits the distribution, sale, or offering for sale of consumer products manufactured after January 29, 2007, whose volatile organic compound (VOC) content exceeds specific thresholds identified in the CPR. The rule applies to the distribution, sale, or offering for sale of consumer products used in households and institutions within the state of Michigan. These consumer products range from deodorants to aerosol paints. The reduction of VOC in consumer products will be accomplished through product reformulation.

The Michigan CPR adopts the September 13, 2006, [Ozone Transport Commission's \(OTC's\) "Model Rule for Consumer Products,"](#) (OTC Rule) with just a few exceptions (go to www.otcair.org and select "Stationary/Area Sources" from the TOPIC drop down menu).

The Ozone Transport Commission is a multi-state organization created under the [Clean Air Act \(CAA\) amendments of 1990](#). The OTC is responsible for advising the [U. S. Environmental Protection Agency](#) (U.S. EPA) on transport issues and for developing and implementing regional solutions to the ground-level ozone problem in the Northeast and Mid-Atlantic regions of the United States. The OTC member states are Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia.

The OTC modeled their rule from the U.S. EPA's "[National Volatile Organic Compound Emission Standards for Consumer Products](#) (September 11, 1998)." Michigan, California and all of the [OTC member states](#) except for Vermont have rules in place. Three U.S. EPA Region 5 states (Illinois, Indiana, and Ohio) are in the process of developing consumer products rules that will adopt the September 13, 2006, OTC Rule.

The Michigan CPR is found in [Rule 660](#) of the [Michigan Air Pollution Control Rules](#). See page 8 on how to obtain a copy of Rule 660 and the OTC Rule.

Health and Environmental Benefits

The Michigan CPR will reduce the release of smog-causing volatile organic compounds (VOCs). VOCs lead to the formation of ground level ozone, an air pollutant that triggers a variety of health problems including aggravated asthma, reduced lung capacity, and increased susceptibility to

respiratory illnesses like pneumonia and bronchitis. It is expected that the Michigan CPR will reduce total VOC emissions by over 5,900 tons per year, which will lower Michigan's ground level concentrations of ozone, and thereby help the state achieve U.S. EPA's air quality standards.

Applicability

All consumer products manufactured for sale in Michigan on or after January 29, 2007, must be in compliance with the CPR. The Michigan (CPR) applies not only to the manufacturers of consumer products, but to the distributors, suppliers, and retailers of consumer products.

If the consumer product is manufactured in Michigan but is shipped out of the state for sale, it is not regulated under the Michigan CPR. However, be aware that other states have similar regulations. "Manufacturer," "distributor," and "retailer" are defined in Section 2 of the [OTC Rule](#).

Exemptions

Products that are incorporated into, or used exclusively in the manufacture or construction of goods or commodities at the site of the establishment, are not considered consumer products, and are not subject to this regulation. Examples include such items as mold-release products and non-aerosol adhesives used in the manufacturing of goods or commodities. Consumer products subject to the CPR are those products for household or institutional use for the maintenance and operation of the facility.

Also exempt are those products used directly in the manufacturing process that do not actually become part of the finished product, but are nonetheless essential to the manufacturing process. For example, cleaning, degreasing, and lubricating products may be exempt from the definition of "consumer products" if the manufacturing process is the only use for these products.

Products that may be used at a manufacturing facility that are consumer products subject to the CPR include products that are used in general cleaning or maintenance of the manufacturing facility. Such products are often similar to commonly available household products and are used to perform tasks (such as cleaning and waxing) that are similar to those performed by a household consumer. Examples include air fresheners, floor waxes, general purpose cleaners, and insecticides.

The consumer or end-user of a consumer product is not subject to the requirements of the CPR *as long as they do not repackage and/or re-sell the product*. Consumers may find that some of the products they normally buy are not available or are only available as a reformulated product.

Definitions

"Consumer product" is defined as a chemically formulated product used by households and institutions including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products. The product types listed in this definition are examples; it is not an exhaustive list.

The definitions for "consumer," "consumer product," "household product," "institutional product" and many of the other terms used in the paragraph above are defined in Section 2 of the [OTC Rule](#).

A **VOC** is any compound that contains carbon and contributes to atmospheric (smog forming) reactions. Michigan has adopted the federal definition of VOC, therefore refer to [40 CFR 51.100](#) (see page 8 on how to obtain a copy).

Consumer products might be formulated with VOCs, or might contain fragrances, color additives, blowing agents, or propellants that contain VOCs.

Manufacturers provide the VOC content of their products on Material Safety Data Sheets (MSDS) and Certified Product Data Sheets. These sheets may be provided with shipping documents or may be available from the manufacturer upon request. Many consumer products have the VOC content information printed on the product label.

Regulatory Requirements

The consumer products regulated under the Michigan CPR are listed in the Table of Standards found in Section 3 of the [OTC Rule](#). Click on “Model Rule – Consumer Products” and go to page 20. The consumer products are categorized and assigned volatile organic compound (VOC) content limits, which are based on the percent of VOC by weight of the product. Remember, only those consumer products that contain VOCs are subject to this regulation.

The definitions of these product categories are very specific. It is not always easy to tell if a product is regulated by looking at the name of the category.

The following procedure can help you determine if one of the product categories applies to the consumer product you make or sell.

1. Make a list of all of the possible product categories from Section 3, Table of Standards, of the [OTC Rule](#) that might apply to your product.
2. Review the definition of one of the product categories on your list. The definitions are provided in Section 2 of the [OTC Rule](#).
3. Compare the characteristics listed in the OTC definition with the characteristics of your product. If they match, the definition applies.
4. Repeat steps 2 and 3 for each of the other possible product categories that might apply. If more than one definition applies, the most restrictive standard will apply to that product.

For help in making this determination, please contact Asad Khan, Michigan Department of Environmental Quality (DEQ), Air Quality Division, at (517) 335-6825, or email at khana@michigan.gov.

The VOC content limits for applicable consumer products are listed in the Table of Standards found in Section 3 of the [OTC Rule](#). Click on “Model Rule – Consumer Products” and go to page 20.

Some of the consumer products listed in the Table of Standards are specifically excluded from having to comply with the VOC content limits:

- a) Air fresheners with VOC content composed entirely of fragrance with a Low Vapor Pressure (LVP) VOC do not have to comply with the VOC content limit for air fresheners. LVP-VOC is defined in Section 2, pp. 13 of the [OTC Rule](#).
- b) Insecticides containing at least 98% paradischlorobenzene do not have to comply with the VOC content limits for insecticides. See Section 2, pp. 12 of the [OTC Rule](#) for more information.

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- c) Adhesives sold in container sizes of one fluid ounce or less do not have to comply with the VOC content limit for adhesive. See Section 2, pp. 32-33 of the [OTC Rule](#).
 - d) Bait station insecticides (containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight) do not have to comply with the VOC content limits for insecticide. See Section 2, pp. 32-33 of the [OTC Rule](#).

There are additional regulatory standards on certain substances contained in the following consumer products: antiperspirants and deodorants, aerosol adhesives, charcoal lighter material products, and floor wax strippers. These additional limits are referenced in Section 3 (b), (e), (f), (g), and (h) of the [OTC Rule](#).

Federal Regulations

There are separate federal requirements contained in [40 CFR 59](#) (beginning with Section 59.2.1) for consumer products. These federal requirements are applicable to manufacturers, importers, and distributors of consumer products and do not apply to retailers and persons that sell consumer products.

Generally, the provisions of the Michigan CPR are more restrictive than the federal regulation, so in most cases compliance with the Michigan rule assures compliance with the federal standard.

Compliance Requirements

The DEQ may use any number of resources or methods to identify non-compliant products. Among those are advertising literature, shipping information, information on container labels, MSDS, Certified Product Data Sheets, and/or other product use information. The DEQ may also sample consumer products at any point in the supply chain and have them tested by an independent laboratory.

If product literature or other information states the VOC content of the consumer product in terms other than percent of VOC by weight, the DEQ may request the information in terms of the proper units. However, if that information is not immediately available, the DEQ may make reasonable assumptions concerning the product and convert the stated VOC content to units of percent by weight for comparison with the standard in order to determine compliance.

Once the DEQ has identified a consumer product that is not in compliance, each person subject to the regulation for that product may be considered by the DEQ to be out of compliance pending a demonstration that the product is, in fact, compliant.

Once a consumer product is identified by the DEQ as non-compliant, the burden of demonstrating compliance rests with the persons or companies subject to the regulation for that consumer product. Compliance might be demonstrated in one of the following ways:

- a) By demonstrating that the consumer product is not subject to the VOC content limit. The DEQ will consider arguments as to why the product does or does not meet the definition of a product category for which a VOC content limit is assigned. The DEQ will make the final determination of applicability.
- b) By demonstrating that the consumer product is compliant through formulation of the product. The DEQ may accept product formulation as an adequate demonstration of the actual VOC content of the consumer product if the manufacturer keeps and provides sufficient records that meet the requirement of the regulation found in Section 9 (2) 3.5.2. of the [OTC Rule](#). Proper

labeling of the product (i.e. usage, recommended dilution, etc.) will usually be considered as part of an adequate demonstration. However, if a product's records appear to demonstrate compliance with the VOC limits, but these records are contradicted by product testing performed using the approved test method, the results of the approved test method will take precedence over the product records and may be used to establish a violation.

- c) By demonstrating that the consumer product is compliant by testing the product. The DEQ will normally accept the results of appropriate approved test methods for determining compliance with VOC content limits. Testing to determine compliance with the VOC content requirements of this regulation shall normally be performed using the California Air Resources Board [\(CARB\) Method 310](#). See page 8 on how to obtain a copy of CARB Method 310. Testing to determine compliance with the certification requirements for charcoal lighter material shall be performed using the procedures specified in the [South Coast Air Quality Management District Rule 1174 - Ignition Method Compliance Certification Protocol](#).
- d) By demonstrating that the consumer product is compliant by another means approved by the DEQ.

Contact Asad Khan, Michigan Department of Environmental Quality, Air Quality Division at (517) 335-6825 or by email at khana@michigan.gov if the approved test methods do not provide results representative of the true VOC content of the consumer product.

Reducing the VOC content of a Consumer Product

A manufacturer can reduce the VOC content through product reformulation (modifying the current formulation of the coating to obtain a lower VOC content). The product reformulation options vary with each product category, and can involve one or more of the following approaches:

- Replacing VOC solvents with a water-based formulation.
- Replacing VOC solvents with acetone or another exempt solvent.
- Increasing the solids content of the product.
- Formulating a non-VOC propellant.
- Changing the valve, container, or delivery system to reduce VOC content.

What to do if a Consumer Product is Not Compliant

- a) Reformulate the product to be compliant or stop providing the product for sale within the state of Michigan.

It is unlawful to supply, sell, or offer for sale in the state of Michigan any consumer product containing VOCs that was manufactured on or after January 29, 2007, unless it is compliant. If a non-compliant product is discovered, it should be removed from shelves immediately. Consumer products that were manufactured before January 29, 2007, may continue to be offered for sale until they are sold.

It is unlawful to manufacture a VOC-containing consumer product on or after January 29, 2007, that will be supplied, sold, or offered for sale within Michigan unless it is compliant with the VOC content limits in the Table of Standards found in Section 3 of the [OTC Rule](#). If you are a manufacturer and have reformulated your product so that it is compliant, you may provide the reformulated product (appropriately labeled) to be supplied, sold, or offered for sale in the state of Michigan. If you are a manufacturer of consumer products, and you are unable to reformulate your product, you must take reasonable precautions to ensure that the non-compliant product is not supplied, sold, or offered for sale within Michigan.

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- b) Obtain a temporary waiver from compliance with the standards.

A person who cannot comply with the requirements set forth in the Table of Standards because of extraordinary reasons beyond the person's reasonable control may apply in writing to the DEQ for a waiver. Among other things, the application must contain a proposed compliance date and a schedule for achieving compliance as expeditiously as possible. Other application requirements and the standards for granting a waiver are set forth in Section 4 (Exemptions) of the [OTC Rule](#).

The review process requires a public hearing and may take several months to complete once the DEQ receives a complete application.

- c) Obtain an Alternative Compliance Plan (ACP) approved for the consumer product.

An "alternative compliance plan" is an approved emissions-averaging program for the purpose of achieving emission reductions equivalent to those achieved by the regulation. It requires significant monitoring, recordkeeping, and reporting requirements to demonstrate compliance with the plan. Application and review requirements may be found in Section 11 of the [OTC Rule](#).

The review process for an ACP application may take 18 weeks after the DEQ receives a complete application. If the [California Air Resources Board](#) (CARB) has issued a currently effective ACP for the same group of consumer products, and the ACP application submitted to CARB and the subsequent CARB approval are consistent with the application submitted to the DEQ, the review process may be expedited.

- d) Obtain an Innovative Product Exemption (IPE) approval for the product.

An "innovative product exemption" is for a consumer product that is not in compliance with an applicable VOC content limit, but due to some characteristic of the product formulation, design, delivery systems, or other factors, the use of that product will result in less VOC emissions than another representative product that complies with the limit. An IPE requires significant testing, monitoring, recordkeeping, and reporting requirements to demonstrate compliance with the exemption requirements. Application and review requirements may be found in Section 5 of the [OTC Rule](#).

The review process for an IPE application may be expected to take 90 days after the DEQ receives a complete application. If the [California Air Resources Board](#) (CARB) has issued a currently effective IPE for the same consumer product, and if the IPE application submitted to CARB and the CARB approval are consistent with the application submitted to the DEQ, the exemption approval process may be expedited.

- e) Apply to the DEQ for a variance from the standards for your consumer product.

A variance is a plan for achieving compliance with the regulatory standard and consists of a temporary standard, sufficient enforceable conditions to ensure compliance with the temporary standard, and enforceable milestones toward compliance with the regulatory standards. Please refer to Part 55 (Air Pollution Control) of the Natural Resources and Environmental Protection Act, Public Act 451 of 1994, [Section 324.5535 - 324.5539](#) for information on variances. Application and review requirements can be directed to Asad Khan at (517) 335-6825 or by email at khana@michigan.gov.

The review process for granting a variance includes a public comment period, a public hearing, and requires approval of the board. Approval may take from six months to a year after the DEQ receives a complete application.

Labeling Requirements

The date (day, month, and year) the consumer product is manufactured, or a code indicating the date must be clearly displayed. The date or date-code information must be located on the container or inside the cover/cap so it is readily observable or obtainable without disassembling any part of the container or packaging. Section 6 of the [OTC Rule](#) references the consumer product labeling requirements.

Products with less than 0.1% VOC by weight and products subject to the regulation under the [Federal Insecticide, Fungicide, and Rodenticide Act](#) (7 USC 136 et seq) do not have to comply with the date or date-code requirement (refer to Section 4 (g) of the OTC Rule).

Aerosol adhesives have some additional labeling requirements. See Section 6 (d) of the [OTC Rule](#) for details.

Reporting Requirements

Annual reports are required for consumer products listed in the Table of Standards, found in Section 3 of the OTC Rule, that contain either perchlorethylene or methylene. The annual reports are due by March 1 of the following year. Therefore, the first report is due on March 1, 2008, for the calendar year of 2007. Please refer to Section 7 (d) of the OTC Rule and [Rule 660](#) for exceptions.

Information about a consumer product (regardless of whether or not it is subject to a standard) must be supplied to the DEQ upon 90 days written notice. The information that might be requested is listed in Section 7 (a) (1-12) of the [OTC Rule](#).

Where to Go For Help

Environmental Assistance Program (EAP):

The DEQ's EAP can help companies understand and comply with federal and state regulations that protect our air, water, and land. For general questions concerning the Michigan CPR, contact the EAP at (800) 662-9278 or e-mail DEQ-EAD-Env-Assist@michigan.gov or at the address below:

Michigan Department of Environmental Quality
Environmental Assistance Program
P.O. Box 30457
Lansing, MI 48909-7957
1-800-662-9278
www.michigan.gov/deqenvassistance

For technical questions concerning the applicability of certain consumer products and requests for waivers, variances, and other alternative standards, contact Asad Khan, Air Quality Division, at (517) 335-6825 or e-mail at khana@michigan.gov.

For a copy of the Michigan CPR (Rules 660-661), CARB Method 310, or the OTC Model Rule for Consumer Products, go to www.michigan.gov/deqair. Click on "Clean Air Assistance" and scroll down to Consumer Products Rule.

The U.S. EPA publishes federal regulations in the code of Federal Regulations (CFR). The CFR is divided into 50 titles that represent broad areas subject to federal regulation. Environmental regulations are found in Title 40 (Protection of Environment). The Titles are further subdivided into Chapters, Parts, and Subparts. The consumer and commercial products regulations are found in Part 59.

For a copy of the U. S. EPA CFR Title 40, Part 51 (VOC definition) and/or Part 59, go to www.epa.gov, select "Laws, Regulations & Dockets" in the right column, and then select "Electronic Code of Federal Regulations" in the far left column. From this page, use the browse option (drop-down box) to select "Title 40 – Protection of Environment" and click on "Go." Click on "50-51" or "53-59," to view the preferred Part. For Part 51, click on "51.1-51.1012" and scroll down to Subpart F, click on "51.100" for "Definitions." From here, scroll down to (s) for the definition of a VOC. To view the National Volatile Organic Compound Emission Standards for Consumer and Commercial Products, click on "59.1-59.699," and scroll down to Subpart C.

This document is intended as guidance only and may be impacted by changes in legislation, rules, and regulations adopted after the date of publication. Although the document makes every effort to teach users how to meet applicable compliance obligations, use of this document does not constitute the rendering of legal advice.